UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,979	11/05/2001	Gavin Brebner	50001890 -2	7955

7590 03/08/2005	EXAMINER
HEWLETT-PARKARD COMPANY	LAZARO, DAVID R
Intellectual Property Administration	

ART UNIT	PAPER NUMBER
2155	

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DATE MAILED: 03/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	09/993,979	BREBNER, GAVIN
	Examiner	Art Unit	
	David Lazaro	2155	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _05 November 2001_.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _1-20_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) _1-20_ is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on _05 November 2001_ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☒ All   b) ☐ Some *   c) ☐ None of:

        1. ☒ Certified copies of the priority documents have been received.

        2. ☐ Certified copies of the priority documents have been received in Application No. _____.

        3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _11/5/01, 2/15/02_.

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____ .

DETAILED ACTION

1.   A preliminary amendment was filed 11/05/2001.

2.   Claims 3, 7, 14, 16 and 19 were amended.

3.   Claims 1-20 are pending in this Office Action.

Papers Received

4.   Supplemental Oath/Declaration received 05/02/2002.

Information Disclosure Statement

5.   The information disclosure statements (IDS) submitted on 11/05/01 and 02/15/02

have been considered by the examiner.

Claim Objections

6.   Claim 3 is objected to because of the following informalities: For consistency and

clarity, the examiner suggests "an accessory server" in line 2 should be "an external

accessory server". Appropriate correction is required.

7.   Claim 4 is objected to because of the following informalities: In line 3, "a" should

be inserted after "to". Also a period is needed.

8.   Claim 16 is objected to because of the following informalities: "out" should be

inserted after "carrying" in the last line. Appropriate correction is required.

9.   Claim 17 is objected to because of the following informalities: For consistency

and clarity, the examiner suggests a distinction should be made as to whether or not

"the computer" in lines 2-3, is "the personal computer". Appropriate correction is

required.

10.   Claim 20 is objected to because of the following informalities: For consistency

and clarity, the examiner suggests that a "computer program product" should be a

"transaction aid computer program product". Appropriate correction is required.

Claim Rejections - 35 USC § 112

11.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter which the applicant regards as his invention.

12.   Claims 5, 10, 15, 17 and 18 are rejected under 35 U.S.C. 112, second

paragraph, as being indefinite for failing to particularly point out and distinctly claim the

subject matter which applicant regards as the invention.

13.   Claim 5 makes use of the "Windows" trademark to identify/describe the type of

operating system. MPEP 2173.05(u) states,

> a.   "If the trademark or trade name is used in a claim as a limitation to identify
> or describe a particular material or product, the claim does not comply with the
> requirements of the 35 U.S.C. 112, second paragraph. Ex parte Simpson, 218
> USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark
> or trade name cannot be used properly to identify any particular material or
> product. In fact, the value of a trademark would be lost to the extent that it
> became descriptive of a product, rather than used as an identification of a source
> or origin of a product. Thus, the use of a trademark or trade name in a claim to
> identify or describe a material or product would not only render a claim indefinite,
> but would also constitute an improper use of the trademark or trade name."

Therefore Claim 5 is rendered indefinite and fails to comply with 35 U.S.C. 112, second

paragraph.

14.   Claim 10 recites the limitation "the client computer" in lines 2-3 of the claim.

There is insufficient antecedent basis for this limitation in the claim.

15.   Claim 15 recites the limitation "said accessories servers" in lines 1-2 of the claim.

There is insufficient antecedent basis for this limitation in the claim.

16.   Claim 17 is drawn to a "transaction aid" that is "in the form of a personal

computer" and is dependent on Claim 16. Claim 16 claims a "transaction aid" that

comprises program code elements. A "transaction aid" is not specifically described in

the specification.. As such, a "transaction aid" is interpreted based on common meaning

and on the context of the claims. Considering claim 16 as a whole, a "transaction aid" is

interpreted essentially as a program product comprising program code elements

providing assistance with a transaction between a user and a remote server. It is not

clear how a "transaction aid", that is essentially a program product comprising program

code elements, can be "in the form of a personal computer" (such as the personal

computer described in page 1 of the specification) as claimed in claim 17. Because of

this, it is not entirely clear what the applicants regard as their invention, and a person of

ordinary skill in the art could not interpret the metes and bounds of the claim so as to

understand how to avoid infringement. Therefore, Claim17 is indefinite.

17.   Claim 18 recites the limitation "the local agent" in line 1 of the claim. There is

insufficient antecedent basis for this limitation in the claim. The examiner notes this

may be an issue with the claim dependency. If Claim 18 is intended to be dependent on

Claim 17, please note "the computer" in Claim 18 should be clarified as to whether or

not it is the "personal computer" recited in Claim 17.

Claim Rejections - 35 USC § 101

18.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
> matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
> conditions and requirements of this title.

19.   Claims 16, 19 and 20 are rejected under 35 U.S.C. 101 because the claimed

invention is directed to non-statutory subject matter.

20.   Claim 16 describes a transaction aid comprising program code elements for

carrying out the method as claimed in Claim 1. However, descriptions of a computer

program not encoded on a computer readable medium do not define any structural and

functional interrelationships between the computer program and other claimed elements

of a computer which permit the computer program's functionality to be realized (See

MPEP 2106.IV.B.1(a)). Since the program code elements are not tangibly embodied so

as to be executable, Claim 16 is directed to non-statutory subject matter.

21.   Claims 19 and 20 describe a transaction aid computer program product having

program code elements for carrying out the method as claimed in Claim 1. However,

descriptions of a computer program product not encoded on a computer readable

medium do not define any structural and functional interrelationships between the

computer program and other claimed elements of a computer which permit the

computer program's functionality to be realized (See MPEP 2106.IV.B.1(a)). Since the

program code elements are not tangibly embodied so as to be executable, Claims 19

and 20 are directed to non-statutory subject matter.

Claim Rejections - 35 USC § 102

22.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

23.   Claims 1-3 and 15-20 are rejected under 35 U.S.C. 102(b) as being anticipated

by U.S. Patent 5,867,714 by Todd et al. (Todd).

24.   With respect to Claim 1, Todd teaches a process for automatically monitoring the

hardware resources of a computer (1), comprising the steps of: - initiating a monitoring

agent (Col. 6 lines (11) for analysing (21) the software packages installed into said

computer and for elaborating a direct representation of said analysis (Col. 6 lines 42-

56); - initiating a connection to a conformity server (3) connected to an Internet or

Intranet network for transmitting said direct representation of the software package,

together with data representative of the actual hardware configuration of said computer

(Col. 11 line 66 - Col. 12 line 8) - elaborating in said conformity server an ideal hardware

configuration and comparing said ideal configuration to said actual configuration (Col.

11 lines 66 - Col. 12 line 8, and Col. 12 lines 30-57); - in response to said comparison,
transmitting information to said monitoring agent (11) so that the latter can initiate a
business transaction with an external server (Col. 12 lines 30-57).

25.   With respect to Claim 2, Todd teaches a process executed in a computer for
automatically monitoring the hardware resources existing in said computer (1),
comprising the steps of: initiating an monitoring agent (11) for the purpose of analysing
the software package which are installed into said computer and for elaborating a direct
representation of said analysis (Col. 6 lines 42-56); initiating a connection to a
conformity server (3) connected to an Internet or Intranet network for the purpose of
receiving data representative of typical hardware configurations and for deriving an ideal
hardware configuration (Col. 11 line 66 - Col. 12 line 8); initiating a determination of the
actual hardware resources for the purpose of a comparison to said ideal hardware
configuration (Col. 11 lines 66 - Col. 12 line 8, and Col. 12 lines 30-57); informing when
necessary the user of the lack of hardware resources repoded by said determination
step (Col. 12 lines 30-57).

26.   With respect to Claim 3, Todd teaches all the limitations of Claim 1 and further
teaches said monitoring agent connects to an accessory server and transmits a request
containing information representative of the actual and ideal hardware resources to an
external accessory server for the purpose of preparing and completing a transaction
(Col. 12 lines 30-57 and Col. 13 lines 16-29).

27.   With respect to Claim 15, Todd teaches all the limitations of Claim 3 and further
teaches said conformity server and said accessories servers are grouped in order to

form an unique server to which said monitoring agent can post request (Col. 12 lines

30-57 and Col. 13 lines 16-29).

28.   With respect to Claim 16, Todd teaches a transaction aid for assisting a

transaction between an user and at least one remote server, the or each said remote

server being prepared to process at least one predetermined command (Col. 12 lines 3-

57), said transaction aid comprising program code elements for carrying a method as

claimed in claim 1 (Claim 16 is rejected based on the same reasoning given in the

rejection of Claim 1, see paragraph 12 above).

29.   With respect to Claim 17, Todd teaches a transaction aid as claimed in claim 16

in the form of a personal computer, the program code elements being implemented as a

local agent for execution on the computer (Col. 6 lines 42-56 and Col. 13 lines 16-29).

30.   With respect to Claim 18, Todd teaches a transaction aid as claimed in claim 16

wherein the local agent is preloaded and arranged to execute when the computer is

booted (Co. 13 line 62 - Col. 14 line 14).

31.   With respect to Claim 19, Todd teaches a transaction aid computer program

product having program code elements for carrying out a method as claimed in claim 1

(Claim 19 is rejected based on the same reasoning given in the rejection of Claim 1, see

paragraph 12 above).

32.   With respect to Claim 20, Todd teaches a computer program product as claimed

in claim 19 in the form of an agent (Col. 6 lines 42-56 and Col. 13 lines 16-29).

Claim Rejections - 35 USC § 103

33.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

34.   Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Todd in

view of "XML As a Representation for Management Information - A White Paper:

Version 1.0", published September 15th, 1998, by Desktop Management Task Force,

Inc. (hereinafter DMTF).

35.   With respect to Claim 4, Todd teaches all the limitations of Claim 3 but does not

explicitly disclose the information received from the conformity server is formatted in the

XML Extended Markup Language which is associated to Document Type Definition

(DTD) file. DMTF teaches information can be formatted the XML Extended Markup

Language which is associated to Document Type Definition (DTD) file (Pages 2-4,

'Overview'). It would have been obvious to one of ordinary skill in the art at the time the

invention was made to take the process disclosed by Todd and modify it as indicated by

DMTF such that the information received from the conformity server is formatted in the

XML Extended Markup Language which is associated to Document Type Definition

(DTD) file. One would be motivated to have this, as use of XML can reduce processing

overhead and allows for interoperation between systems regardless of the underlying

platform and/or operating environment (Pages 2-3, 5th paragraph of 'Overview' that

starts with "Management information...").

36.   Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Todd in view of DMTF as applied to claim 4 above, and further in view of U.S. Patent

6,230,199 by Revashetti et al. (Revashetti).

37.   With respect to Claim 5, Todd in view of DMTF teaches all the limitations of

Claim 4 and further teaches the operating system is a windows type operating system

(Col. 11 lines 33-40 and Col. 12 lines 35-42 of Todd). Todd in view of DMTF does not

explicitly disclose the analysis of the software packages configuration is based on an

analysis of the registry. Revashetti teaches the analysis of the software packages

configuration of a computer can be based on the registry (Col. 11 lines 5-16 and lines

48-62). It would have been obvious to one of ordinary skill in the art at the time the

invention was made to take the process disclosed by Todd in view of DMTF and modify

it as indicated by Revashetti such that the operating system is a Windows type

operating system and that the analysis of the software packages configuration is based

on an analysis of the registry.   One would be motivated to have this, as it is desirable to

ensure provided product information is based upon the individual user's computing

environment configuration (Col. 3 lines 6-10 and Col. 11 lines 5-16 and lines 48-62 of

Revashetti).

38.   With respect to Claim 6, Todd in view of DMTF and in further view of Revashetti

teaches all the limitations of claim 5 and further teaches the analysis of the software

packages configuration is based upon the systematic research of the file types which

are loaded onto the hard disk drive (Col. 11 lines 5-16 and lines 30-47 of Revashetti).

39.   Claims 7-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Todd in view of U.S. Patent 6,314,565 by Kenner et al. (Kenner).

40.   With respect to Claim 7, Todd teaches all the limitations of Claim 1 and further

teaches a request transmitted to the conformity server (Col. 11 line 66 - Col. 12 line 8)

contains information representative of the type or model of the computer (Col. 6 lines

42-67). Todd further teaches indifference to the mode of communications used (Col. 6

lines 31-41) and suggests the use of the Internet to connect the computer to the

conformity server (Col. 13 lines 5-15). Todd does not explicitly teach the request

conforming to the Hypertext Transfer Protocol (HTTP). Kenner teaches the use of

HTTP and HTML are common modes of internet communications (Col. 1 lines 38-60

and Col. 2 lines 6-32). Kenner teaches a request transmitted to a server that conforms

to HTTP and includes information related to the request (Col. 10 lines 5-29). It would

have been obvious to one of ordinary skill in the art at the time the invention was made

to take the process disclosed by Todd and modify it as indicated by Kenner such that

said request transmitted to said conformity server conforms to the Hypertext Transfer

Protocol (HTTP), and contains a query string containing information representative of

the type or model of the computer. One would be motivated to have this, as HTTP is a

commonly known way to transmit and access information on networks such as the

internet (Col. 1 lines 34-60 of Kenner).

41.   With respect to Claim 8, Todd teaches all the limitations of Claim 3 and further

teaches a request transmitted to the accessory server (Col. 12 lines 30-57 and Col. 13

lines 16-29) contains information extracted from a local profile and representative of the

actual hardware resources (Col. 6 lines 42-67 and Col. 12 lines 30-57). Todd further

teaches indifference to the mode of communications used (Col. 6 lines 31-41) and

suggests the use of the Internet to connect the computer to the accessory server (Col.

13 lines 5-15). Todd does not explicitly teach the request conforming to the Hypertext

Transfer Protocol (HTTP). Kenner teaches the use of HTTP and HTML are common

modes of internet communications (Col. 1 lines 38-60 and Col. 2 lines 6-32). Kenner

teaches a request transmitted to a server that conforms to HTTP and includes

information related to the request (Col. 10 lines 5-29). It would have been obvious to

one of ordinary skill in the art at the time the invention was made to take the process

disclosed by Todd and modify it as indicated by Kenner such that said request

transmitted to said accessory server conforms to the Hypertext Transfer Protocol

(HTTP), and contains a query string containing information extracted from a local profile

and representative of the actual hardware resources. One would be motivated to have

this, as HTTP is a commonly known way to transmit and access information on

networks such as the internet (Col. 1 lines 34-60 of Kenner).

42.   With respect to Claim 9, Todd in view of Kenner teaches all the limitations of

Claim 8 and further teaches said local profile contains profile data that are

representative of platform configuration, and are extracted from information available at

the Basic Input Output System (BIOS) level (Col. 11 lines 43-58 of Todd).

43.   With respect to Claim 10, Todd in view of Kenner teaches all the limitations of

Claim 8 and further teaches said profile data are collected by means of interrogation of

standardized systems management interfaces present in the client computer (Col. 11

lines 43-58 of Todd).

44.   With respect to Claim 11, Todd in view of Kenner teaches all the limitations of

Claim 8 and further teaches said profile parameters are collected by means of an

interrogation via the Distributed Management Interface (DMI) or Window management

Interface (WMI) (Col. 11 lines 43-58 of Todd).

45.   With respect to Claim 12, Todd in view of Kenner teaches all the limitations of

Claim 8 and further teaches said monitoring agent (11) receives the response from said

accessory server (4) under the form of a Hypertext Markup language (HTML) page, and

pushes it to a web browser for allowing the completion of the transaction between the

user and the server (Col. 10 lines 5-29 and Col. 1 lines 33-60 of Kenner).

46.   With respect to Claim 13, Todd teaches all the limitations of Claim 3 but does not

explicitly disclose the conformity server posts a list of accessory servers to which the

request transmitted by said agent can be mapped thereby permitting modification of the

offers that can be made to the user. Kenner teaches the use of a list of servers to which

a request can be mapped thereby permitting modification of the offers that can be made

to the user (Col. 10 lines 5-29 of Kenner). It would have been obvious to one of

ordinary skill in the art at the time the invention was made to take the process disclosed

by Todd and modify it as indicated by Kenner such that the conformity server posts a list

of accessory servers to which the request transmitted by said agent can be mapped

thereby permitting modification of the offers that can be made to the user. One would

be motivated to have this as it is desirable to have a user-friendly diagnostic process

that is functional to a user specific system (Col. 1 lines 46-54 and Col. 3 lines 1-8 of

Todd).

47.   With respect to Claim 14, Todd teaches all the limitations of Claim 1 and further

teaches the monitoring agent may be a software program (Col. 6 lines 43-56). Todd

does not explicitly disclose the monitoring agent is downloaded from said conformity

server. Kenner teaches a monitoring agent that can be downloaded from a server (Col.

6 line 56-66 and Col. 9 lines 3-9). It would have been obvious to one of ordinary skill in

the art at the time the invention was made to take the process disclosed by Todd and

modify it as indicated by Kenner such that said monitoring agent is downloaded from

said conformity server. One would be motivated to have this, as it is desirable to keep

the monitoring agent and related processes up to date in a relatively easy fashion (Col.

9 lines 3-9 of Kenner).

Conclusion

48.   The prior art made of record and not relied upon is considered pertinent to
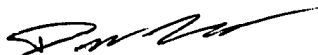
applicant's disclosure.

49.   U.S. Patent 6,470,464 by Bertram et al. "System and method for predicting

computer system performance and for making recommendations for improving its

performance" October 22, 2002. Discloses monitoring network performance such that

future bottlenecks can be predicted. System includes recommendations, such as

upgrading certain hardware, in order to avoid the future bottlenecks.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Lazaro whose telephone number is 571-272-3986. The examiner can normally be reached on 8:30-5:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain Alam can be reached on 571-272-3978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David Lazaro
March 3, 2005

HOSAIN ALAM
SUPERVISORY PATENT EXAMINER